

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA
WESTERN DIVISION**

FIREARMS REGULATORY
ACCOUNTABILITY COALITION, INC.,
STATES OF WEST VIRGINIA, NORTH
DAKOTA, *et al.*,

Plaintiffs,

v.

MERRICK B. GARLAND, *et al.*,

Defendants.

Civil Action No. 1:23-cv-0024-DLH-CRH

**PLAINTIFFS' OPPOSITION TO DEFENDANTS' MOTION FOR EXTENSION OF
TIME TO FILE RESPONSE**

Defendants' Motion for an Extension of Time to File a Response to Plaintiffs' preliminary injunction should be denied.

First, Plaintiffs filed a preliminary injunction motion because, as that motion explains in detail, the Rule is effective immediately, and so is the harm resulting from it. *See* PI Mem., ECF No. 7-1, at 36–39; *accord* Creamer Decl., ECF No. 1-10, ¶¶ 38–48; Luce Decl., ECF No. 1-11 ¶¶ 9–19; Cicero Decl., ECF No. 1-13, ¶¶ 23–27, 31; White Decl., ECF No. 1-12, ¶¶ 15–24. Defendants could have made the rule effective at a later date, as is standard in agency rulemakings, *see* 5 U.S.C. § 553(d), but they chose instead to flout even the Congressional Review Act (“CRA”), stating that, after the CRA period passes, they will prosecute individuals who purchased braced pistols within the first 60 days of the Rule going into effect. *Compare* 5 U.S.C. § 801(a)(3)(A), *with* Rule, 88 Fed. Reg. 6,478, 6,481. The consequence of Defendants' insistence on rushing to effectuate a Rule that criminalizes conduct that Defendants had deemed lawful for a decade, and that had been pending for almost eighteen months, is that small businesses are suffering substantial losses and will likely close, employees of those businesses are being laid off, and individuals with

disabilities like Plaintiff Richard Cicero are being deprived the ability to use safely, acquire, sell, or travel across state lines with lawful firearms. Defendants should not now get the benefit of additional time to respond to the preliminary injunction motion beyond what the Local Rules allow.

Second, Plaintiffs did not somehow delay filing their papers, as Defendants suggest. The Government knows full well that no case could be filed until January 31, 2023. As the motion explains in detail, Defendants issued a 293-page rule that differs substantially not only from the Notice of Proposed Rulemaking issued eighteen months earlier, but all previous ATF positions on pistols equipped with stabilizing braces. Moreover, after ATF published the Rule on its website, it continued to make changes and corrections, including a substantial change with respect to how Section 922(r) affects the registration of firearms under the Rule. *See* ATF, *Frequently Asked Questions For Final Rule 2021-08F*, at 4-5 (updated **Feb. 13**, 2023), <https://www.atf.gov/firearms/docs/undefined/final-rule-2021r-08f-frequently-asked-questions-and-sba-compliance-guide-2/download>. It took time to analyze the Rule, the enormous record associated with it, and subsequent changes and to develop the necessary arguments, but nine days after the effective date is hardly delay.

Third, the Government does not need more time to analyze and respond to the “complex issues of constitutional and administrative law.” *See* ECF No. 22 at 2. The Government has been analyzing these issues for over eighteen months now and published a 293-page Rule addressing those issues. The claim that it needs more time to respond to these previously raised issues calls into question whether “the decision was based on a consideration of the relevant factors and whether there has been a clear error of judgment.” *Motor Vehicle Mfrs. Ass’n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983). Moreover, the Government’s position is that the National Firearms Act and Gun Control Act have always unambiguously rendered pistols with

stabilizing braces short-barreled rifles. If that is the case, the Government should not even need the forty pages that Plaintiffs agreed to for the opposition. And there are no “potential . . . threshold issues.” *Contra* ECF No. 22 at 2. This case involves State, company, trade association, and individual plaintiffs, all of which have been injured by the Rule.

Finally, Plaintiffs provided the Government with courtesy copies of the complaint, preliminary injunction motion, and exhibits on Friday, February 10, 2023, after attempting personal service during business hours under Fed. R. Civ. P. 4(i)(1)(A)(i). *See* Ex. A. While service under Rule 4(i)(1)(A)(i) was not perfected until February 13, 2023, the Government cannot deny earlier knowledge of and access to the relevant pleadings. Defendants should not be given still more time to respond to the motion.

For the foregoing reasons, the Court should deny the motion and require Defendants to respond to the preliminary injunction motion on February 27, 2023, as required under the Local Rules.

February 16, 2023

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**pro hac vice or admission application forthcoming*